IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6455 OF 2006

Smt. Usha D. Patkar .... Petitioner

versus

Smt. Savita M. Kelkar and ors. .. Respondents

Mr. M.S. Topkar for the petitioner
Mr. Kiran Bapat with Avinash Fatangare for Respondent no.2.
Mr. A.M. Joshi for respondent no.1.

ALONGWITH

WRIT PETITION 2816 OF 2006

New Education Society .... Petitioner

versus

Smt. Savita M. Kelkar ..... Respondent.

Shri Kiran Bapat with S.B. Shetye for the petitioner
Shri A.M.Joshi for Respondent no.1.
Mr,. M.S.Topkar for respondent no.3

CORAM; A.P. DESHPANDE, J.
DATED; 21ST FEBRUARY, 2007

JUDGMENT;

1. As both the writ petitions challenge the same impugned order passed by the Presiding Officer, School Tribunal the writ petitions are heard together and are being disposed of by this common judgment.

2. Writ Petition No.6455/06 is filed by one Smt. Usha Patkar whereas the other writ petition No.

2816/06 is filed by the New Education Society, Pune which administers and manages secondary school by name Agarkar High School. The said school is imparting education only to the girls and is popularly known as girls school. The school in question is a recognised and aided school. The service conditions of the employees working in the school are governed and eliminated by MEPS Act and the rules made thereunder.

3. The respondent no.1 Smt. Kelkar filed an appeal before the tribunal by claiming that her right to the promotional post has been superseded by granting promotion to the petitioner in W.P. no. 6455/06 so also one Smt. Marathe. The appeal filed against the promotion granted to Smt. Marathe is concerned, the same has been dismissed and the respondent no.1 has not challenged the judgment and order passed by the tribunal to the extent, it rejected the appeal calling in question the legality and validity of grant of promotion to Smt. Marathe. In the present writ petitions the issue that has been addressed by the learned counsel appearing for the respective parties are in regard to the claim of Smt. Patkar viz-a-viz the claim of Smt. Kelkar to the promotional post of Assistant Head Mistress. Few facts which are relevant for deciding the issue involved in these petitions are to the following effect.

4. The petitioner Smt.Patkar was appointed on 1-6-1973 on which date she was a trained graduate teacher possessing B.Sc. B.Ed. qualification. Whereas though the respondent no.1 was appointed prior in point of time with effect from 8-6-1970 she was possessing qualification of G.D.Arts and Arts Master. The respondent no.1 Smt. Kelkar was appointed in the year 1970 as a special teacher viz. Arts teacher. Arts teachers are categorised as special teachers and prior to 25-11-1988 Arts teachers were not covered in Category C of Schedule F annexed to the MEPS rules which lays down the guide-lines for fixation of seniority. For the first time on 25-11-1988 the State Government issued a Resolution and directed that the teachers like the respondent no.1 (Arts teachers) possessing the said qualifications which are possessed by the respondent no.1, be included in category C of Schedule F. The Government Resolution in para 4 made it clear that the seniority of the Arts teacher in category C shall be reckoned from the date of issuance of Government Resolution, viz. the entry of Arts teacher in category C. It is further relevant to note that Arts teachers were never considered for interse seniority with other teachers in category C and the Arts teachers were also not considered for grant of promotion to the promotional post of Head and Assistant Head. For the first time by the Government Resolution dated 25-11-1988, directions were issued to

include Arts teachers in category C of Schedule F to compete interse with other teachers for seniority in category C and were granted eligibility to compete for promotion. As per G.R. dated 25-11-1988 the respondent no.1 would enter in category C on the said date and as the petitioner has been in category C, right since her initial appointment i.e. 1-6-1973 being a trained graduate teacher, the petitioner was obviously senior to respondent no.1. However the matter does not rest there. The State Government then issued a corrigendum as late as on 9-4-2003 seeking to delete the words " from the date of this Resolution" appearing in para 4 of the Government Resolution dated 25-11-1988. The effect of the said deletion was to bestow the status of category C teacher on the Arts teacher from the point of time said teachers acquired the relevant qualification or from the date of their joining the service after acquisition of the said qualification. It is only on account of the corrigendum dated 90-4-2003 that the respondent no.1 could contend that she has entered category C right from the date of her initial appointment viz. 8-6-1970. It appears that the State Government realised that by issuing a corrigendum dated 9-4-2003 the interse seniority of Arts teachers viz-a-viz other teachers would be affected to a great extent and hence by issuing the Resolution dated 15th July 2004, the corrigendum dated 9-4-2003 has been cancelled. The

effect of G.R. dated 15th July 2004 is to restore the position as obtained by G.R.dated 25-11-1988 meaning thereby that the Arts teachers possessing requisite qualification would enter category C from the date of the Resolution.

5. In the above facts situation, a vacancy came into being in the post of Assistant Head Mistress on account of promotion of Smt. Marathe. It will thus be seen that the vacancy has come into being before the cancellation of the corrigendum dated 9-4-2003 by G.R. dated 15-7-2004. The petitioner was actually promoted on 13-8-2004. The promotion so granted to the petitioner was challenged by respondent no.1 as stated hereinabove by filing an appeal before the tribunal.

6. The learned advocates appearing for the petitioners have contended that on cancellation of the corrigendum dated 9-4-2003 by G.R. dated 15-7-2004 no enforceable legal right survive for the respondent no.1 to seek promotion by filing an appeal. Hence it is submitted that the school tribunal has committed an error in allowing the appeal by holding that the petitioner was junior to the respondent no.1 and hence the claim of the first respondent was superseded by granting promotion to the petitioner. Per contra the learned counsel Mr. Joshi for the respondent no.1 has

vehemently contended that G.R.dated 25-11-1988 goes to grant equivalence to the qualifications acquired by the Arts teachers with the qualifications of the teachers covered by category C. Thus the same ought to have been granted by G.R. dated 25-11-1988 from the date the respective Arts teachers acquired the said qualification. Alternatively it is contended by the learned counsel for the respondent no.1 that as the vacancy in the post of Asstt. Head Mistress had occurred in between 9-4-2003 and 15-7-2004, viz. the date of corrigendum and the date of the Resolution the respondent no.1 could continue to enjoy the benefit despite cancellation of the corrigendum.

7. Perusal of the judgment and order passed by the tribunal would reveal that the tribunal was impressed by the submission that as the vacancy had arisen after issuance of the corrigendum dated 9-4-2003 and prior to its cancellation by GR dated 15-7-2004, the seniority bestowed by the corrigendum dated 9-4-2003 would be intact and thus right to promotion would spring in favour of the respondent no.1. The tribunal has held that had the management taken a immediate decision in regard to grant of promotion, respondent no.1 would have been entitled to promotion as the vacancy had occurred on 1-6-2004.

8. What is to be seen is that for the first time the

Government had directed that the Arts teachers satisfying the qualification laid down in the GR dated 25-11-1988 should be included in category C from the date of the Government Resolution. The said position continued to hold the field for almost 15 years. For the reasons best known to the State Government, after lapse of a period of 15 years, belatedly a corrigendum came to be issued on 9-4-2003 fixing Arts teacher's seniority from the time they acquired qualification of Arts teacher or from the date of their appointment after acquiring the qualifications. The effect of the corrigendum was not only limited to the Arts teacher but it adversely affected the position of other teachers in the seniority list and re-opened the issue of interse seniority of the employees as a whole. The settled seniority positions were altogether disturbed and hence it appears that the Government had then taken a decision by issuing a G.R. on 15-7-2004 to cancel the corrigendum dated 9-4-2003.

9. It may not be out of place to state that neither the corrigendum nor the Government Resolution dated 15-7-2004 has been challenged by any of the parties to these petitions. It is a settled position in law that the Government Resolutions operate prospectively from the date they are issued and thus the G.R.dated 25-11-1988 rightly made it clear in para 4 that the G.R. would operate from the date of its issuance and

the Arts teacher would enter category C from the said date. There does not appear to be any justification for the State Government to have issued a corrigendum belatedly after 15 years, deleting the words from para 4 of the GR dated 25-11-1988 "from the date of this order/Resolution" and thereby make the resolution applicable retrospectively. The mischief which was created by the corrigendum dated 9-4-2003 is sought to be remedied by G.R. dated 15-7-2004. By the G.R.dated 15-7-2004 the corrigendum has been cancelled and on cancellation of the same, Arts teacher cannot claim to possess any right much less legally enforceable. If this the position, the respondent no.1 could not have successfully challenged the grant of promotion to the petitioner to the post of Asstt. Head Mistress with effect from 13-8-2004. As I am of the view that the respondent no.1 could not have legitimately claim the seniority viz-a-vis the petitioner by entering category C on 25-11-1988, it cannot be said that the respondent no.1’s claim to the promotional post has been superseded by granting promotion to the petitioner as Asstt. Head Mistress with effect from 13-8-2004. In this view of the matter the impugned judgment and order passed by the tribunal needs to be quashed and set aside, same being patently illegal.

10. The learned counsel for the respondent no.1

placing reliance on a judgment reported in 2000(4) Mh.L.J. page 689 contended that a vested right cannot be destroyed by the Government Resolution. As observed by me hereinabove that the right to seniority in category C itself being destroyed, by GR dated 15-7-2004 for the period prior to 25-11-1988, no legal right much less enforceable in a court of law is available to the respondent no.1. Hence judgment in which reliance is placed has no application to the present case.

11 In the result, the writ petitions are allowed. Impugned judgment and order passed by the tribunal is quashed and set aside. Rule made absolute in above terms with no orders as to costs.

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